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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

RAMIRO ALONSO MARQUEZ,

Plaintiff,

v.

ERNST NURSERY & FARMS, L.L.C., a
domestic limited liability company,

Defendant.

Civil No.: 6:17-cv-572-AA

FIRST AMENDED COMPLAINT

**Title VII, Civil Rights Act; Fair Labor
Standards Act; Migrant and Seasonal
Agricultural Worker Protection Act;
Oregon Anti-Discrimination and Wage
and Hour Laws**

DEMAND FOR JURY TRIAL

I. PRELIMINARY STATEMENT

1. Plaintiff Ramiro Alonso Marquez brings this action against his former employer, Ernst Nursery & Farms, L.L.C., under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*; Federal Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*; Migrant and Agricultural

Worker Protection Act; 29 U.S.C. §§ 1801 *et seq.*; Oregon civil rights statutes, O.R.S. Chapter 659A, and Oregon wage and hour statutes, O.R.S. Chapter 652. Mr. Alonso was discriminated against on the basis of his sex. Specifically, he was subjected to severe and pervasive sexual harassment, retaliated against for reporting sexual harassment to his supervisor, and ultimately discharged by Defendant Ernst Nursery & Farms in retaliation for both reporting sexual harassment and the filing of a wage and hour claim. In addition, Defendant Ernst Nursery & Farms failed to provide an adequate itemized wage statement during Mr. Alonso's employment and failed to pay him timely upon his termination.

II. JURISDICTION

2. This Court has jurisdiction of this action pursuant to the following:
 - a. 28 U.S.C. §1331, as this action arises under the laws of the United States;
 - b. 28 U.S.C. §1337, as this action arises under Acts of Congress governing commerce;
 - c. 28 U.S.C. §1343, as this action arises under laws providing for equal protection;
 - d. 42 U.S.C. § 2000e-5(f)(3), as this action arises under Title VII of the Civil Rights Act;
 - e. 29 U.S.C. § 215, as this action arises under the Federal Labor Standards Act;
 - g. 20 U.S.C. § 1854, as this action arises under the Migrant and Seasonal Agricultural Worker Protection Act; and
 - h. 28 U.S.C. §1367, as the state claims are so related to the federal claims as

to form part of the same case or controversy under Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. § 1391 because the claims alleged in this complaint are based upon events which have substantially occurred in Marion County, Oregon.

III. PARTIES

4. Plaintiff Ramiro Alonso Marquez is a male who resides in Washington County, Oregon.

5. Defendant Ernst Nursery & Farms L.L.C. is a limited liability company, registered and doing business in the state of Oregon, with its principal place of business in Marion County, Oregon.

IV. FACTS

6. In 2010, Mr. Alonso was hired and employed by Defendant Ernst Nursery & Farms as a seasonal agricultural worker.

7. Defendant is an agricultural employer.

8. Throughout Mr. Alonso's employment, he reported directly to Emilio Delgado-Campuzano. Mr. Delgado had the authority to create schedules, hire and fire employees and also handled the task of paying Mr. Alonso's wages for Ernst Nursery & Farms.

9. Beginning in 2014 and continuing through the end of Mr. Alonso's employment he was subjected to pervasive sexual harassment by another employee, Victor (last name unknown). Victor would touch Mr. Alonso on his legs and butt, show his penis to Mr. Alonso, solicit sex from Mr. Alonso, and directed other sexually charged statements to Mr. Alonso.

10. On various occasions Mr. Alonso reported this pattern of harassment to Mr. Delgado, but no corrective action was taken, and the pattern of harassment continued.

11. On July 27, 2015, Mr. Alonso complained to Mr. Delgado regarding unpaid wages.

12. Mr. Delgado fired Mr. Alonso as a result of his complaints to Defendant.

13. Mr. Alonso filed a wage and hour complaint with the Oregon Bureau of Labor and Industry, soon after, Defendant paid Mr. Alonso unpaid wages earned in the period from July 2014 to May 2015. Mr. Alonso was also returned to his position on August 3, 2015.

14. After Mr. Alonso returned to work, Mr. Delgado assigned Mr. Alonso more difficult work duties and reduced Mr. Alonso's hours significantly.

15. On August 27, 2015, after Mr. Alonso continued to complain about the reduced work schedule, Mr. Delgado terminated Mr. Alonso's employment again.

16. Defendant failed to pay all of Mr. Alonso's wages timely upon termination.

17. On September 2, 2015, Mr. Alonso filed a wage and hour complaint with the Oregon Bureau of Labor and Industry for additional unpaid wages.

18. On September 14, 2015, Oregon Bureau of Labor and Industry sent a notice to Defendant of Mr. Alonso's unpaid wages.

19. Mr. Alonso did not receive his additional unpaid wages until October 13, 2015.

20. During Mr. Alonso's employment with Defendant, Defendant failed to provide Mr. Alonso with an itemized pay statement that stated the basis on which his wages were paid.

21. Mr. Alonso timely filed a complaint with Oregon Bureau of Labor and Industry for his claims of discrimination and retaliation, which co-filed his complaint with the Equal Employment Opportunities Commission.

22. Mr. Alonso received notice of right to sue from Oregon Bureau of Labor and

Industry on January 11, 2017 and received notice of right to sue from Equal Employment Opportunities Commission on April 19, 2017.

23. All actions by Defendant's agent, Mr. Delgado, set forth above were carried out in a supervisory capacity with actual or apparent authority from Defendant.

V. CLAIMS FOR RELIEF

First Claim - Title VII (42 U.S.C. §§ 2000e *et seq.*)

24. Defendant Ernst Nursery & Farms violated 42 U.S.C. § 2000e-2(a)(1) by discriminating against Mr. Alonso with respect to his sex by failing to prevent severe and pervasive sexual harassment suffered by Mr. Alonso after he reported the harassment to his supervisor, Mr. Delgado, and by terminating his employment because of his opposition to the sexual harassment.

25. Defendant Ernst Nursery & Farms violated 42 U.S.C. § 2000e-3(a) by terminating his employment because of his opposition to the sexual harassment.

26. Plaintiff seeks injunctive relief, back pay, compensatory damages, attorneys' fees and costs under 42 U.S.C. § 2000e-5.

Second Claim – Fair Labor Standards Act Anti-Retaliation (29 U.S.C. § 215)

27. Defendant Ernst Nursery & Farms violated 29 U.S.C. § 215(a)(3) by retaliating against Mr. Alonso for filing a complaint under or related to the Fair Labor Standards Act when it reduced Mr. Alonso's hours, reassigned Mr. Alonso to worse work duties, and ultimately terminated his employment.

28. Pursuant to 29 U.S.C. § 216(b), Plaintiff seeks such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3), including without limitation

the payment of wages lost, an additional equal amount as liquidated damages, compensatory damages, and attorneys' fees and costs.

Third Claim – Migrant and Seasonal Agricultural Worker Protection Act (29 USC §§ 1801, et seq.)

29. Defendant intentionally violated the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) by failing to provide Mr. Alonso with adequate itemized wage statements pursuant to 29 USC § 1831(c)(2).

30. Defendant intentionally violated the AWPA by failing to pay Mr. Alonso all of his wages when due pursuant to 29 USC § 1832(a).

31. Plaintiff seeks statutory damages of \$500.00 for each of defendant's violations of the AWPA pursuant to 29 U.S.C. §1854, together with his court costs.

Fourth Claim – Oregon Unlawful Sex Discrimination (O.R.S. § 659A.030)

32. Defendant Ernst Nursery & Farms violated O.R.S. §659A.030 by discriminating against Mr. Alonso with respect to his terms, conditions, and/or privileges of employment because of his sex by failing to prevent severe and pervasive sexual harassment suffered by Mr. Alonso after he reported the harassment to his supervisor, Mr. Delgado.

33. Defendant violated ORS § 659A.030(1)(f) by discharging Mr. Alonso for opposing unlawful employment practices of Defendant.

34. Plaintiff seeks injunctive relief, compensatory damages, back pay, and attorneys' fees and costs for the violation of rights protected by O.R.S. § 659A.030 under O.R.S. § 659A.885.

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Fifth Claim – Oregon Unlawful Whistleblower Discrimination (O.R.S. § 659A.199)

35. Mr. Alonso reported in good faith to Defendant that he believed Defendant's employees were violating state or federal law, including Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000e *et seq.*, and ORS 659A.030.

36. Defendant Ernst Nursery & Farms retaliated against Mr. Alonso for reporting potential violations of law by reducing Mr. Alonso's hours, reassigning Mr. Alonso to worse work duties, and ultimately terminating his employment.

37. Plaintiff seeks injunctive relief, compensatory damages or \$200 in statutory damages, back pay, and attorneys' fees and costs for the violation of rights protected by O.R.S. § 659A.199 under O.R.S. § 659A.885.

Sixth Claim – Oregon Unlawful Discrimination Because of Wage Claim (O.R.S. § 652.355)

38. Defendant Ernst Nursery & Farms retaliated against Mr. Alonso for filing a wage claim by reducing Mr. Alonso's hours, reassigning Mr. Alonso to worse work duties, and ultimately terminating his employment.

39. Plaintiff seeks injunctive relief, back pay, attorney fees and costs for the violation of rights protected by O.R.S. § 652.355 under O.R.S. § 659A.885.

Seventh Claim – Oregon Timely Payment of Wages (O.R.S. § 652.140)

40. Defendant violated O.R.S. § 652.140 by failing to pay Mr. Alonso's unpaid wages when due upon termination of employment.

41. Defendant's failure to timely pay wages was willful.

42. Under O.R.S. § 652.150, Plaintiff is entitled to a penalty wage of 240 times his hourly rate of pay, attorneys' fees and costs.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court grant him the following relief against Defendant Ernst Nursery & Farms:

1. Enjoin Defendant and order reinstatement of Plaintiff to his former position with Defendant, or, in the alternative, award appropriate front pay;
2. Award Plaintiff compensatory damages;
3. Award Plaintiff his economic damages, including full back pay;
4. Award an equal amount of lost wages as liquidated damages;
5. Award damages for emotional distress, mental anguish, loss of enjoyment of life, humiliation, pain and suffering and/or \$200 in statutory damages;
6. Award statutory damages of \$500 for each violation of AWPAs;
7. Award penalty wage of 240 times Plaintiff's hourly rate of pay;
5. Award Plaintiff's reasonable attorneys' fees and costs;
6. Award post-judgment interest on all claims;
7. Award Plaintiff such other and further relief as this Court may deem just and proper.

Respectfully submitted this 21st day of April, 2017.

/s/ Corinna Spencer-Scheurich
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Attorney for Plaintiff